

### REMARKS

Claims 1, 22, 35, 54, 63, 72, 85 and 87 have been amended, and new claims 90 and 91 have been added. Claims 5-8, 18-21, 23, 56-58, 60, 61, 77, 80, 83, 88, and 89 have been cancelled without prejudice or disclaimer of subject matter. Therefore, claims 1-4, 9-17, 22, 24-55, 59, 62-68, 71, 72, 76, 78, 79, 81, 82, 84-87, 90, and 91 are pending in this application, with claims 1, 54, 63, and 72 being independent. Support for the amendments can be found, for example, in FIG. 15 and at p. 38, line 19 to p. 39, line 4 of the specification. No new matter has been added.

In the final Office Action of June 11, 2009 ("Office Action"), claims 1-32, 35-43, 47-68, and 71-86 were rejected under 35 U.S.C. § 103(a) based on U.S. Patent No. 5,880,731 ("Liles"), W.I.P.O. Patent Application Publication No. 01/84461 ("Kim"), and U.S. Patent No. 7,039,676 ("Day"); claims 33 and 34 were rejected under 35 U.S.C. § 103(a) based on Liles, Kim, Day, and U.S. Patent No. 7,007,065 ("Matsuda"); claims 44-46 were rejected under 35 U.S.C. § 103(a) based on Liles, Kim, Day, and U.S. Patent No. 7,177,811 ("Ostermann"). The Applicant submits that these rejections should be withdrawn for at least the following reasons.

#### Interview Summary

The undersigned thanks Examiner Vu for the recent telephonic interview. In the interview, Examiner Vu agreed that amendments to claims 1, 54, 63, and 72 would overcome the currently cited references, if the amendments include receiving out-of-band information from an application operating concurrently with the communication session and if the amendments distinguish the automatic gesture software described by Day. The substance of the interview is reflected in the preceding amendments and the following remarks, which point out that Day fails to disclose use of its automatic gesture software to produce outputs unrelated to and independent from the communication software.

#### Section 103 rejection based on Liles, Kim, and Day

Liles, Kim, and Day do not support a conclusion of obviousness with respect to claims 1-32, 35-43, 47-68, and 71-86.

Independent claim 1 recites, among other things, a method comprising:

receiving, from a computer application operating concurrently with the communication session and independently of the first user and the message, out-of-band information indicating an activity of the first user, the computer application producing outputs unrelated to and independent from the communication session; and

communicating, independently of the first user and the second user, the out-of-band information to the second user by changing an animation of the avatar representing the first user to graphically convey the activity of the first user indicated by the received out-of-band information

(emphasis added). Liles, Kim, and Day—whether taken alone or in proper combination—fail to disclose or suggest at least these features.

Liles discloses a system for communication between participants using graphical representations in a chat session where the participants may select a “gesture” with which to animate the participant’s avatar. *See Liles*, col. 10, lines 33-45. Kim discloses a method for changing the background screen image in a three-dimensional virtual space based on the determined physical location of a user. *See Kim, Abstract*. However, neither Liles nor Kim describe receiving, from a computer application operating concurrently with the communication session and independently of the first user and the message, out-of-band information indicating an activity of the first user, the computer application producing outputs unrelated to and independent from the communication session, as recited in claim 1. In fact, neither Liles nor Kim describe or suggest the use of a computer application operating concurrently with the communication session.

Recognizing deficiencies in Liles and Kim, the Office Action turns to Day. Day describes automatic gesture software that sends commands to chat room software based on analysis of gestures by a user captured through a video camera. *See Day, Abstract*. Day specifically teaches that the purpose of the automatic gesture software is to interact with the chat room software to enable a participant at a computer system to communicate with other participants over a network. *See Day*, col. 5, lines 23-28. In other words, the use of the automatic gesture software is dependent on the use of the chat room software, since the only described outputs of the automatic gesture software are commands “inputted to the chat room

software." See Day, col. 9, lines 16-32. In fact, Day discloses no other uses for the automatic gesture software than with different forms of communication software, and as such, fails to disclose use of its automatic gesture software to produce outputs unrelated to and independent from the communication software. See Day, col. 12, lines 11-17. More specifically, Day does not describe or suggest receiving, from a computer application operating concurrently with the communication session and independently of the first user and the message, out-of-band information indicating an activity of the first user, the computer application producing outputs unrelated to and independent from the communication session, as recited in claim 1.

For at least the foregoing reasons, Liles, Kim, and Day—taken alone or in a proper combination—fail to disclose or suggest each and every element recited in independent claim 1. Moreover, no basis has been established for concluding that it would have been obvious to one of ordinary skill in the art to bridge the aforementioned gaps between the claims and the applied references. See M.P.E.P. § 2141(III) (July 2008). Indeed, the applied references do not provide such a basis. The section 103 rejection of claim 1 and its dependent claims should accordingly be withdrawn.

For reasons similar to those discussed above with regard to claim 1, independent claims 54, 63, and 72 are distinguishable over the applied references. Therefore, withdrawal of the section 103 rejections of claims 54, 63, and 72 and their respective dependent claims is requested.

*Section 103 rejection based on Liles, Kim, Day, and Matsuda*

In the Office Action, claims 33 and 34 were rejected under section 103 based on Liles, Kim, Day, and Matsuda. Matsuda fails to cure the deficiencies of Kim and Liles with respect to independent claim 1. Accordingly, Kim, Liles and Matsuda—whether taken alone or in a proper combination—fail to render obvious claim 1 or its dependent claims 33 and 34. The section 103 rejection and the timely allowance of dependent claims 33 and 34 is therefore requested.

*Section 103 rejection based on Liles, Kim, Day, and Ostermann*

The Office Action rejected claims 44-46 under section 103 based on Liles, Kim, Day, and Ostermann. Ostermann fails to cure the deficiencies of Kim and Liles with respect to the

independent claim 1. Accordingly, Kim, Liles and Ostermann—whether taken alone or in a proper combination—fail to render obvious claim 1 or its dependent claims 44-46. The section 103 rejection and the timely allowance of dependent claims 44-46 is therefore requested.

Conclusion

It is requested that the Examiner reconsider the application in view of the remarks and timely allow the pending claims.

It is believed that all pending issues in the outstanding Office Action have been addressed by this paper. The Office Action, however, contains a number of statements reflecting characterizations of the related art and the claims. Whether or not any such statement is identified herein does not constitute an automatic subscription to any statement or characterization in the Office Action. In addition, there may be reasons for patentability of any or all pending or other claims that have not been expressed above.

If there are any questions regarding this paper or the application generally, a telephone call to the undersigned would be appreciated since this may expedite prosecution of the application.

Applicant : Patrick Blattner et al.  
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It is hereby petitioned that the period for response to the Office Action be extended for one (1) month. The Petition for Extension of Time fee of \$130.00 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please grant any additional extensions of time required to enter this paper and apply any required charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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